

# PARTICIPATION AGREEMENT

THIS PARTICIPATION AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 2000, by and between Farmland Industries, Inc., PO Box 7527, Kansas City, MO 64116-0227 ("Farmland") and [REDACTED] located at [REDACTED] ("Participant").

## Premises

A. America's Best Pork® ("ABP") is Farmland's consumer-driven pork food chain system of independent producers. The parties acknowledge that certain requirements, protocols, and standards must be adopted within this pork food chain system to improve the safety, consistency and quality of the final pork product that is marketed to Farmland's customers in the retail, foodservice, international, and other market channels.

B. Triumph Pork Group LLC ("Triumph") was formed to develop proprietary genetics for Farmland as an integral part of America's Best Pork. Participant desires to cooperate in the effort to improve pork carcass quality through the use of Triumph genetics and by participating in a vertically coordinated pork food chain system.

## Agreement

1. **Triumph Genetics.** From the date of this agreement, all genetic material entering the Participant's farm or production facility will be governed by that certain Triumph Genetic Supply Member Agreement ("Member Agreement") entered into by and between Triumph and Participant. The Member Agreement will contain the terms and conditions concerning the provision, use, sale, and transfer of Triumph genetics from Triumph to Participant.

2. **System Standards and Process Verification.** To assure the quality, consistency and safety of the pork produced in the ABP pork food chain system and the genetics used in this system, Farmland shall have the right to conduct an auditing program to validate the compliance of Participant with the America's Best Pork® system standards ("System Standards"). The System Standards will be incorporated in the America's Best Pork® USDA Process Verification Program ("PVP") and includes standards and processes pertaining to genetics, nutrition, animal welfare, animal health and medical treatment, production, facility operation, environmental assurance, and other standards and processes pertaining to the pork production process. Participant acknowledges that Participant has been informed of the System Standards as they exist on the date of this Agreement. The System Standards are to be updated

or revised at any time and from time to time as determined by Farmland in its sole and absolute discretion. ABP will inform Participant of changes in the System Standards in a timely and commercially reasonable manner that facilitates Participant's compliance with such changes. Participant must comply with the System Standards, allow on-farm audits (which audits may be scheduled in advance or conducted without prior notice, at the discretion of Farmland), and take corrective action when Farmland makes a determination that the Participant is not in compliance with the System Standards.

3. **Authorization for Release of Veterinary and Feed Information.** Participant acknowledges veterinary services and feed supply services are a critical component of the System Standards and compliance with the PVP. Participant irrevocably grants to ABP the right to obtain access, inspect, and audit the records of all veterinarians and veterinary clinics providing services to Participant, and all persons or entities supplying feed and feed services to Participant in connection with Participant's participation in ABP. Participant agrees to authorize the release of such information by signing an Authorization of Release as set forth on Exhibit A, attached hereto and incorporated herein by reference. If the Authorization of Release is revoked, withdrawn,

or impaired by Participant, Farmland shall have the right to terminate this Participation Agreement.

4. **Participant Information.** Participant further agrees to make available and to provide to ABP all other information and data in the Participant's possession or control that are necessary to audit and validate Participant's compliance with the System Standards. Participant acknowledges that the transfer of data through the Internet is a reasonable and generally accepted method of transferring business information, and Participant agrees to fully cooperate with and participate in any Internet data transfer program organized or administered by ABP.

5. **Marketing Agreement.** Participant shall maintain an existing marketing agreement with Farmland or enter into a marketing agreement with Farmland for the delivery of all market hogs containing Triumph genetics to Farmland ("Marketing Agreement"). In the event a valid Marketing Agreement between the Participant and Farmland ceases to exist or Participant fails to comply with its obligations under the Marketing Agreement, Farmland shall have the right to terminate this Participation Agreement.

6. **ABP Participation Fee.** Participant agrees to pay to Farmland a fee in the amount of \$0.50 per market hog marketed to Farmland under the Participant's Marketing Agreement ("ABP Participation Fee"), starting on the date of this Agreement. Participant authorizes Farmland to deduct the ABP Participation Fee directly from each settlement payment to Participant for delivery of market hogs under the Marketing Agreement.

7. **Term.** The term of this Agreement shall be four (4) years, beginning on the effective date set forth on page 2 of this Agreement ("Term"). In the event of a termination of the Member Agreement, Farmland may terminate this Agreement and the Marketing Agreement. Upon expiration of the Term, the ABP Participation Fee will no longer be collected by Farmland.

8. **Authority.** Each individual executing this Agreement on behalf of the Participant represents that he or she has full authority to bind the Participant to all terms and conditions of this Agreement. Each of

the parties to this Agreement represents that he or she has full individual, partnership or corporate authority to enter into this Agreement. Each party agrees to provide evidence of such authority upon request by the other party.

9. **Limitation of Liability.** Participant's exclusive remedy for any and all losses or damages resulting from this Agreement and/or the Member Agreement and activities associated with such sale, including but not limited to a claim of breach of warranty, breach of contract, negligence or strict liability, shall be limited to replacement value of the Triumph genetics delivered for which such claim is proved. **UNDER NO CIRCUMSTANCES SHALL FARMLAND, TRIUMPH, AND/OR THE OWNERS OF TRIUMPH BE LIABLE TO PARTICIPANT FOR ANY OTHER LOSSES, DAMAGES, WHETHER DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES.**

10. **Force Majeure; Government Allocation.** Neither party shall be liable to the other party for any demurrage, loss or damage resulting from any delay or for failure to make or accept deliveries caused by or arising out of acts of God or the elements, wars, public disorders, storms, sabotage, strikes, labor difficulties, when raw materials or supplies are interrupted or unavailable, or any other cause beyond such party's reasonable control. Upon a party's giving of notice and explanation of such force majeure to the other party, the obligations of the parties hereto shall be suspended from the date of such notice and for the continuance of any inability to perform so caused. Without limiting the foregoing, Farmland or Triumph shall not be required to remove such cause or replace the affected source of supply if it shall involve additional capital expense or a departure from Triumph's normal procedures. Nothing contained in this Agreement shall be construed to relieve Participant of Participant's obligations to promptly pay Triumph in full for Triumph genetics delivered to Participant or other monetary obligations of Participant hereunder.

11. **Compliance & Safety.** Participant shall comply at all times with all applicable laws and regulations, including environmental laws and regulations, in Participant's operation of the facilities.

Farmland or Triumph shall have no obligation to deliver Triumph genetics or to cause Triumph genetics to be delivered to any facility not in compliance with applicable laws and regulations.

12. **Indemnification.** Participant shall DEFEND, INDEMNIFY, AND SAVE HARMLESS Farmland and Triumph, and their officers, directors, agents and employees, from and against any and all claims, demands, damages, losses, liabilities, causes of action, judgments, fines, assessments (including penalties and interest), costs and expenses of any kind or nature, including reasonable attorneys' fees, expenses of litigation, and court costs (collectively, the "Losses"), without regard to amount, for damages to, or loss of, any property, or injury to, or death of, any person or persons, including without limitation persons employed or engaged by either party, to the extent such Losses are, directly or indirectly caused by, connected with, or arising out of any intentional or unintentional action or omission of Participant, or its officers, directors, agents or employees, to the extent permitted by law.

13. **Alternative Dispute Resolution.** In the event of any controversy arising out of or relating to this Agreement, or any breach thereof (excluding collection matters, which Farmland may pursue in court), the parties agree to submit the dispute for resolution by Mini-Trial, unless both parties agree that such procedure is inappropriate for the matter in controversy. Such Mini-Trial shall be conducted in accordance with the Center for Public Resources (CPR) Mini-Trial for Business Disputes and may be initiated by either party by a written request to the other party. In the event the parties are unable to resolve the controversy through the Mini-Trial, the dispute shall be submitted to binding arbitration in accordance with the rules of Missouri law. Such arbitration shall be initiated by either party by notifying the other party in writing and requesting a panel of five (5) arbitrators from the American Arbitration Association. Alternate strikes shall be made to the panel commencing with the party requesting the arbitration until one name remains. Such individual shall be the arbitrator for the controversy. The party requesting the arbitration shall notify the arbitrator who shall hold a hearing(s) within 60 days of the notice. The arbitrator shall render a decision within 20 days after the conclusion of the

hearing(s). Judgment upon the award rendered by the arbitrator may be entered in any Court having jurisdiction thereof. All fees for such arbitration will be divided equally between the parties except that each party shall pay its own attorney's fees and costs associated with producing documents and other information. If Participant asserts any claim and has failed to pay Farmland for any ABP Participation Fee or owes any payment to Farmland, Participant shall be obligated to pay to Farmland all amounts owed, with no right of setoff, as a condition of invoking this Alternative Dispute Resolution procedure.

14. **Notices.** Any notice required by this Agreement shall be in writing, and shall be deemed to be properly served three days after the date deposited in the U.S. Post Office if sent by certified, registered or regular mail, and properly addressed to the party at its respective address as set forth in this Agreement, unless changed by notice. Any notice under this Agreement by a method other than through the U.S. Postal Service shall be in writing and shall be effective only upon actual receipt of such notice. All notices to Farmland must be copied to Farmland's legal department, at the address of Farmland as set forth in this Agreement, unless changed by notice.

15. **Independent Contractor.** This Agreement does not constitute Participant as an agent, legal representative, joint venturer, partner, employee, or servant of Farmland for any purpose whatsoever. Participant is an independent contractor and is in no way authorized to make any contract, agreement, warranty or representation on behalf of Farmland, or to create any obligation, express or implied, on behalf of Farmland. Participant shall hold itself out to the public to be an independent contractor operating pursuant to a license from Farmland.

16. **Assignment.** This Agreement may not be assigned or transferred by Participant, directly or indirectly, without the advance written consent of Farmland, which consent shall not be unreasonably withheld. Any change of control of Participant, whether by operation of law or otherwise, shall be deemed an assignment or transfer. Assignments or transfers not consented to by Farmland shall be void.

17. **Choice of Law and Time of Action.** This Agreement, and all rights, obligations, and duties

arising hereunder, and all disputes which may arise hereunder, shall be construed in accordance with, and governed by, laws of the State of Missouri. The parties hereto consent to the jurisdiction and venue of the federal and state courts in the State of Missouri as the exclusive forum to resolve all claims or disputes arising hereunder. Participant expressly waives any objection relating to improper venue, and waives any right to a trial by jury. The parties shall file any suit or action arising out of this Agreement within one (1) year from the occurrence of the facts giving rise to such suit or action, or such suit or action shall be barred.

**18. Modification and Waiver.** This Agreement may be modified, altered, or amended only by a writing signed by each party. The failure of Farmland to exercise any right given to it hereunder, or to insist on strict compliance with all provisions hereof, shall not constitute a waiver of any provision of this Agreement, unless Farmland shall have confirmed the waiver in writing. Any such waiver shall not act as a waiver of the same provision on any other occasion or of any other provision of this Agreement.

**19. Enforceability.** In the event that a provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid or unenforceable, such provision shall be ineffective only to the extent of such provision is explicitly deemed invalid, void or enforceable, but the remainder of this Agreement shall not be affected unless deemed integral by Farmland, and all the other provisions of this Agreement shall be valid and enforced to the fullest extent permitted by law.

**20. Entire Agreement.** This Agreement, including its exhibits, contains the entire understanding between the parties and shall supersede all prior negotiations, representations, agreements and understandings, whether oral or written, between the parties with respect to the subject matter hereof. Nothing contained in this Agreement shall be construed as granting Participant an exclusive territory or an exclusive group of retail customers. Triumph reserves the right to sell any Triumph genetics to any person of Triumph's own choice.

**21. Contract Acceptance.** The terms and conditions of this Agreement shall not constitute a

binding contract between the parties unless and until it has been executed by authorized representatives of both parties.

**22. Default by Participant; Farmland's Remedies.** If Participant shall fail to observe or perform any covenant or agreement contained herein, Farmland may terminate this agreement upon written notice to Participant. Farmland will not exercise this right until Farmland has given Participant notice of such failure and thirty (30) days to cure such failure. Notwithstanding the foregoing, Farmland shall have the immediate right to terminate this Agreement in its sole and absolute discretion upon notice to Participant under the provisions of Sections 3, 5 or 7 under this Agreement, or in the event Participant is given more than one default notice in any one-year period, or in the event it appears to Farmland that Participant's default is material, willful or based on fraud, misrepresentation or deception.

**23. Assignment to Farmland.** For good and valuable consideration, Participant hereby, pledges, assigns, transfers, sets over, and delivers unto Farmland, all of its right, title, and interest in and to a certain portion of the proceeds of sale paid to Participant on all market hogs sold or transferred by Participant for slaughter and constitutes and appoints Farmland as the true and lawful attorney-in-fact of the Participant to do and perform, from time to time, any and all functions necessary or incidental to the purpose of this assignment and hereby ratifies and confirms any actions of Farmland as attorney-in-fact in connection herewith, including the commencement of such legal proceedings in the name of either the Farmland or the Participant as may be deemed necessary by Farmland for the purpose of enforcing the Participant's rights and remedies and the endorsement and negotiation in the name of the Participant of any notes, acceptances, drafts, checks, money orders, and instruments of payment or remittances issued or received with respect to payments under contract. This assignment is for the limited purpose of collecting Triumph genetic fees, ABP Participation Fees, or any other payments due to Triumph or Farmland from Participant as result of Participant's contractual obligations to such entities. The Participant will not accept any surrender or cancellation, or enter into any modification or alteration of Participant's rights with respect to

payments, without the written consent of the interpreted under the laws of the State of Missouri.  
Farmland. The terms of this Assignment will be

In Witness Whereof, the parties have caused this Agreement to be executed on the day and year above written.

**THIS CONTRACT CONTAINS A BINDING ARBITRATION CLAUSE WHICH MAY BE ENFORCED  
BY THE PARTIES.**

**FARMLAND INDUSTRIES, INC.**

**PARTICIPANT:** \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: H. D. Cleberg

Name: \_\_\_\_\_

Title: President & CEO

Title: \_\_\_\_\_

## AUTHORIZATION FOR RELEASE OF VETERINARY AND FEED INFORMATION

### TO WHOM IT MAY CONCERN:

The undersigned producer ("Producer") authorizes the release of requested information and any and all records regarding the documentation of the America's Best Pork® Process Verification Program ("ABP PVP") to Farmland Industries, Inc. ("Farmland") employees, other representatives of the ABP PVP, and/or to the USDA Agricultural Marketing Service (USDA/AMS). The requested information and records apply to veterinary care and feed manufacturing services rendered to or on behalf of any swine herds owned or controlled by the Producer. The information to be disclosed includes all records, reports, invoices (excluding transaction amounts), documents, materials, notes, memoranda, or correspondence that pertain to the swine herds owned or controlled by the Producer. This information may include information that may be of a sensitive or confidential nature.

Producer represents that Producer understands that the disclosed information will be released to Farmland employees, other representatives of the ABP PVP, and/or USDA/AMS in connection with the Producer's agreement to participate in the ABP PVP, and may also be provided by America's Best Pork® to parties who purchase or are considering to purchase pork from Farmland Foods, Inc.

As part of this Authorization For Release, Producer waives any applicable privileges that may arise under any applicable state law with respect to any information permitted to be disclosed under this Authorization For Release. This Authorization For Release includes information in your possession that may not be contained in veterinary charts or any written records, and authorizes you to discuss the health status, care and treatment of swine herds owned or controlled by Producer with Farmland employees, other representatives of the ABP PVP, and/or USDA/AMS, and authorizes you to execute any affidavits or other statements requested by America's Best Pork® or USDA/AMS with respect to those swine herds.

This Authorization For Release shall continue in full force and effect until revoked by the Producer in writing. This Authorization For Release may be photocopied and any such photocopy shall be considered as valid as the original.

This Authorization For Release has been signed and delivered by a duly authorized representative or officer of the Producer on the date shown below.

Date: \_\_\_\_\_

"Producer": \_\_\_\_\_

(Printed name of individual, farm, or company)

Signature: \_\_\_\_\_

If "Producer" is a farm or company,  
complete the following items:

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_



## TRIUMPH GENETIC SUPPLY MEMBER AGREEMENT

THIS AGREEMENT is made effective this \_\_\_\_\_ day of \_\_\_\_\_, 2000, by and between Triumph Pork Group LLC ("Triumph") and \_\_\_\_\_ located at \_\_\_\_\_ ("Member").

### Premises

Member desires to purchase certain genetics from Triumph, which genetics are initially to be provided to Triumph by Pig Improvement Company, Inc., ("PIC"), and which may from time to time be supplied not only by PIC but by other providers as well. Triumph agrees to sell such genetics to Member in accordance with, and subject to, the terms and conditions of this Agreement.

### Agreement

NOW, THEREFORE, in consideration of the foregoing and the mutual promises, covenants and agreements set out herein, the receipt and sufficiency of which is hereby acknowledged, the parties agree to the following terms.

1. **Triumph Genetics.** From the date this Agreement is fully executed, all genetic material entering the Member's farm will be genetics that are approved in writing by Triumph (gilts, semen, and boars). PIC genetics are provided to Triumph in accordance with a certain Genetic Agreement ("PIC Genetic Agreement") executed by and between Triumph and PIC. Under the PIC Genetic Agreement, PIC agrees to sell to Triumph certain genetics as more specifically set forth in the PIC Genetic Agreement ("PIC Genetics"). All PIC Genetics provided hereunder that are obtained through the PIC Genetic Agreement are subject to the provisions of such agreement. There may be genetics obtained from other sources in connection with the Triumph genetic improvement program ("Triumph Program"). The provision of such other genetics may be governed by the terms and conditions contained in other agreements. Certain provisions herein will deal with "Restricted Genetics". The term "Restricted Genetics" is given the meaning that it has in the PIC Genetic Agreement, which is as follows: "Animals, semen, embryos or other genetic material where any part of the genetic material of the animals, semen, embryos or other genetic material is derived from PIC Genetics transferred or licensed to Triumph pursuant to the terms of this [PIC Genetic] Agreement." The term "PIC Genetics" means those animals, semen, embryos, or other genetic material owned or otherwise belonging to PIC and all progeny and/or genetic material produced or obtained therefrom that is licensed or made available to Triumph under this Agreement and shall include Confidential Information, defined below, and the term "PIC Genetics" also includes, without limitation, genetic material from animals the genetics of which have been supplied prior to the date of this Agreement under a preexisting agreement between PIC and Member. The term "Triumph Genetics" means those animals, semen, embryos, or other genetic material that is sold, licensed, or made available to Member by Triumph under this Agreement, including without limitation, both PIC Genetics described above and Confidential Information, defined below.

2. **Purchase of Triumph Genetics.** Triumph will sell or transfer to Member, and Member will purchase or acquire from Triumph, the rights to use the Triumph Genetics. Sales of Triumph Genetics will be subject to availability from Triumph and shall be made in accordance with and subject to the Conditions of Sale, attached to this Agreement as Schedule 1 and incorporated herein by reference. The Triumph genetic fee shall be \$1.10 per pig marketed ("Triumph Genetic Fee"), starting on the effective date of this Agreement, and such fee shall be collected from Member on the day of slaughter at the Farmland slaughter facility.

Additional fees may be assessed from Member if and when significant technological developments provided by Triumph to Member significantly increase the Member's productivity and profitability. (See Section 9, below.) Such additional fees will be determined on a case-by-case basis.

3. **Genetic Transfer Cost.** The cost of goods for the specified genetics is set forth on Schedule 2, attached hereto and incorporated herein by reference. The cost of the animals acquired hereunder shall be paid to Triumph upon delivery of the semen, boars, and gilts. Triumph, at its option and in its sole and absolute discretion, at any time and from time to time on or after January 1, 2001, may revise the cost of goods of the genetics set forth on Schedule 2; provided, however, Triumph shall give Member ninety (90) days prior written notice of such revision in the cost of goods.

4. **Payment.** Payment is due in full within ten (10) days from date of invoice. A finance charge of 1½% per month (18% per year) will be added to any amount unpaid after 10 days. Triumph may withhold future deliveries if Member fails to make payments for the prior two deliveries. If the unpaid amount is outstanding for a period longer than 60 days, Triumph may, in its sole and absolute discretion, terminate this Agreement.

5. **Term.** The term of this Agreement shall be four (4) years, beginning on the effective date set forth on the first page of this Agreement ("Term").

6. **Member Reports and Record Keeping.** (a) Quarterly Reporting. Member will use commercially reasonable efforts to report to Triumph on a quarterly basis (January 1, April 1, July 1 and October 1), the number of sows, artificial insemination boars and natural service boars in all herds ("Herds") owned by Member that have received Triumph Genetics. Member acknowledges that the transfer of data through the Internet is a reasonable and generally accepted method of transferring business information, and Member agrees to cooperate with and participate in any Internet data transfer program organized or administered by Triumph. Member will submit its books and records to the audit procedures set out herein, for the purpose of assuring Member's compliance with its obligations under this Agreement and any other agreement relating to the protection of Triumph Genetics, intellectual property and other proprietary information. (b) Sow Production Records. Member will subscribe to either PigCHAMP™ or PigCare™ (PigCare™ is a trademark of PIC, its parent company, and its associated companies) for keeping sow herd records.

7. **Obligations Pertaining to Member.** Member and Triumph acknowledge that a key component contemplated by this Agreement pertains to the contractual relationship between Triumph and the Member that owns and operates the facilities that will produce pigs from Triumph Genetics ("Triumph Pigs"). In connection with such relationship, Member shall, in accordance with Member's commercial practices and subject to standards of commercial reasonableness, exercise Member's best efforts to assure that all obligations regarding confidentiality and noncompetition are complied with in this Agreement. Triumph shall have the right and obligation to prosecute any member that violates any term of the contracts with Triumph that are executed in connection with the Triumph Program. All enforcement decisions with respect to the Triumph Program shall be made in Triumph's sole and absolute discretion.

8. **Confidentiality.** (a) Obligations of Member. Member shall use commercially reasonable efforts to keep confidential all Confidential Information it receives from Triumph as a result of the relationship between Triumph and PIC created under the PIC Genetic Agreement. (b) Confidential Information. For purposes of this Agreement, the term "Confidential Information" shall include, without limitation, research, development programs, breeding programs, selection indices, methods of operation, technical knowledge,



intellectual property, trade secrets, marketing, sales, financial, operating, performance, business and process information and data, know-how, and computer programs and other software and software techniques made available to one party of this Agreement to the other party pursuant to the terms of this Agreement. Confidential Information shall not be provided to a party unless such Confidential Information is expressly offered by the party possessing the Confidential Information (the "Disclosing Party"), which Confidential Information shall be identified as "Confidential Information" by being marked as such prior to the disclosure by the Disclosing Party. The party to whom the disclosure is made (the "Recipient Party") shall have an opportunity to accept or decline receipt of the Confidential Information. The Recipient Party shall accept information as Confidential Information by one or more individuals who have been designated by the Recipient Party as being persons who are authorized to receive Confidential Information, marking on a duplicate copy of the Confidential Information that the Confidential Information transferred to the Recipient Party is accepted by the Recipient Party as Confidential Information. If the Confidential Information is disclosed verbally, then the disclosure of such Confidential Information shall be reduced to writing within ten (10) days after such disclosure and shall be marked as Confidential Information and accepted or declined in the manner set forth in the preceding sentences. "Confidential Information" shall not include such portions of Confidential Information that: (1) become generally available to the public other than as a result of a disclosure by a Recipient Party or its agents, representatives or employees; (2) become available to a Recipient Party on a nonconfidential basis from a source (other than the other party to this Agreement or its agents) which is not prohibited from disclosing such information to the Recipient Party by a legal, contractual or fiduciary obligation; (3) are in the public domain prior to the disclosure; (4) are lawfully in possession of the Recipient Party prior to the disclosure; (5) become part of the public domain by publication or otherwise through no unauthorized act or omission on the part of the Recipient Party; (6) are independently developed by an employee of the Recipient Party with no access to such confidential information; (7) are required to be disclosed by law or court order; or (8) are transmitted by the Disclosing Party after receiving notification by the Recipient Party that the Recipient Party does not desire to receive the Confidential Information. (c) Survival. The covenants regarding confidentiality in this Section 8 shall survive the termination of this Agreement.

9. **Value Share.** Member acknowledges that the entities which provide genetics in connection with the Triumph Program have requested, or may request, to share in the benefits of the proven captured benefit of certain genetic improvements and technological breakthroughs related to production performance in the Herds. For purposes of this Agreement, the term "Value Share Basis" means the sharing of the "captured proven benefit" of an improvement in lines or a technological breakthrough elected for use by Triumph and Member.

(A) Captured Proven Benefit of Quantitative Improvement In Lines. The "captured proven benefit" of a quantitative improvement in lines means the difference between the net value of the improvement as compared to that of the next best alternative line of genetic material. The net value of an improvement is its value less cost of acquisition.

(i) Quantitative Improvements Offered as Part of Triumph Genetic Fee. Quantitative improvements offered as part of the Triumph Genetic Fee include quantitative improvements in lines achieved through ordinary selection methods or similar methods, and include similar developments in the ordinary course of genetic improvement which are not quantitative improvements, all of which are offered as part of the Triumph Genetic Fee.

(ii) Quantitative Improvements Offered on Value Share Basis. Quantitative improvements offered on a Value Share Basis include quantitative improvements in lines achieved other than through ordinary selection or similar methods, and include other developments made other than in the ordinary

course of genetic improvement which are not quantitative improvements, all of which are offered solely on a Value Share Basis (i.e., not offered as part of the Triumph Genetic Fee).

(B) Captured Proven Benefit of Technological Breakthrough. The "captured proven benefit" of a technological breakthrough means the actual value, without netting as compared to the next best alternative line of genetics material, of the technological breakthrough as determined using Triumph's benchmarking matrix.

(i) Technological Breakthrough. The term "technological breakthrough" is understood to mean a development occurring within the Triumph Program that enhances or improves technological practices and know-how beyond the normal genetic improvement process (i.e., an improvement which is not a quantitative improvement).

(ii) Manner of Access. In the event Triumph achieves a technological breakthrough or an improvement of the base germ plasm which is not offered as part of the Triumph Genetic Fee, then Triumph will notify Member of the availability of such improvement or technological breakthrough and Member may elect to use such improvement or technological breakthrough, and its value will be shared on a Value Share Basis. With respect to any genetic material (whether animal, semen, embryo, device or otherwise) elected to be used by Member, Member shall pay initially for such genetic material on a cost of goods basis and shall thereafter pay the Triumph Genetic Fee adjusted for Value Share Basis on each Triumph Pig marketed.

10. Audit Procedures. (a) Initiation of Audit and Selection of Auditors. When there is a matter subject to audit under the terms of this Agreement, Triumph will notify Member about the audit by sending Member a notice setting forth the scope of the audit. (b) Access to Books, Records and Resources. Triumph shall have access to all books and business records of Member (provided that such access does not include such access to financial statements of Member), and shall have access to all Herds for inspection of such Herds provided, that with respect to the inspection of a Herd, reasonable notice shall be given and all biosecurity and generally accepted health precautions shall be observed with respect to such inspection.

## 11. Termination.

A. This Agreement will continue in effect until: i) the expiration of the Term of this Agreement; ii) at Triumph's option, upon the termination of the PIC Genetic Agreement; iii) at Triumph's option, upon Member's breach of this Agreement; iv) at Member's option, anytime beginning twenty-four (24) months after Triumph has begun collecting the Triumph Genetic Fee from Member; or v) the mutual agreement by the parties to terminate this Agreement. Termination of this Agreement due to the termination of the PIC Genetic Agreement or due to Member's breach of this Agreement will be effective upon notice by Triumph to Member. Triumph also shall have the right to terminate this Agreement in the event the Member's America's Best Pork<sup>®</sup> Participation Agreement or Market Hog Purchase Agreement with Farmland is terminated for any reason. Upon termination, Triumph requires that Member dispose of all animals containing Triumph Genetics that are included in the following categories: Great Grandparent females, Grandparent females, AI boars, and natural service boars. Member shall have the right to conduct such disposal in a commercially reasonable manner so long as such disposal is in compliance with applicable requirements of the PIC Genetic Agreement.

B. Upon termination as a result of Member's breach, Member shall be required to pay a termination fee to Triumph, which fee will be calculated using the Triumph Genetic Fee plus any applicable Value Share Basis per animal multiplied by Member's expected monthly market hog production, and then multiplied by a factor of 12. For purposes of this Section, "expected monthly market hog production" shall

mean the monthly average number of market hogs Member sent to slaughter during the three (3) full calendar months immediately prior to the last day Member sent market hogs for slaughter by Farmland. In the event that Member is stocked with Triumph Genetics but never sells market hogs to Farmland, then the termination fee shall be the Triumph Genetic Fee plus any applicable Value Share Basis per animal multiplied times the number of market hogs Member is obligated to sell to Farmland during the first year of Member's Market Hog Purchase Agreement with Farmland. Member shall make such payment in full within 10 days from the date of invoice.

C. Upon termination for any reason, if Member has agreed to a Value Share Basis adjustment as described in Section 9 of this Agreement, then Member shall pay Triumph the Value Share Basis adjustment per anticipated market hog for the next 12 months (as described in above paragraph).

## **12. Severance of Member.**

A. If Member fails to supply all of its production of Triumph Pigs to Farmland for a period of two consecutive months or ceases to be a member of Triumph prior to the expiration of the Term of this Agreement (the earlier of the last day of the two month period or the day that Member ceases to be a member of Triumph being the "Severance Date"), then Member shall be required to pay Triumph a termination fee. This termination fee will be calculated by determining Member's expected monthly market hog production multiplied by a factor of 12, and again multiplied by the Triumph Genetic Fee plus any applicable Value Share Basis. The parties hereby acknowledge that the purpose of using a multiplier factor of 12 to determine a termination fee is to approximate the estimated production of market hogs for slaughter by Member after the Severance Date and agree that such multiplier factor is reasonable. In the event that Member is stocked with Triumph Genetics but never sells market hogs to Farmland, then the termination fee shall be equal to the number of market hogs Member is obligated to sell to Farmland during the first year of Member's Market Hog Purchase Agreement with Farmland multiplied by a fee of the Triumph Genetic Fee plus any applicable Value Share Basis; provided, that in the event of force majeure resulting in Member not selling to slaughter or transferring Triumph Pigs containing Restricted Genetics for at least two years after the last date upon which Member is stocked with Triumph Genetics, then Member shall not be required to pay to Triumph the termination fee described in this Section. In any case, Member will slaughter any breeding stock containing Triumph Genetics which were owned or housed by the severed Member at the time Member ceased to be a Member or failed to supply Triumph Pigs to Farmland.

B. In the event that Member had elected to participate in Value Share Basis, a Value Share Basis termination fee will be due to Triumph, as described in Section 11.

**13. Procedures Upon Termination.** Upon termination of this Agreement, Member shall cause all animals (described in Section 11) containing Restricted Genetics in all Herds to be slaughtered and all other genetic material (e.g., semen and embryos) that contain Restricted Genetics to be destroyed. Member shall have the right to conduct any such slaughter and destruction described in this Section 13 in a commercially reasonable manner so long as such disposal is in compliance with applicable requirements of the PIC Genetic Agreement.

## **14. Covenant Not-To-Compete.**

A. As a condition to obtaining access to the genetics to be supplied by PIC, the following covenant not to compete has been required by PIC. During the Term of this Agreement, and for a period of twenty (20) years after the end of the Term of this Agreement, Member will not, jointly or severally, establish, engage in, or otherwise become involved in, directly or indirectly, as an owner, member, partner or shareholder with more than a

twenty percent (20%) interest, in the business of selling pigs or other swine genetics for breeding stock purposes with respect to Restricted Genetics in the United States and will use the Restricted Genetics only in accordance with the terms of this Agreement including, without limitation, the territorial limitations set forth below in Section 15. PIC may have the right to enforce this provision.

B. In the event Member violates the covenant not to compete contained herein, Triumph may immediately cease providing Member with any genetics hereunder. In the event Member breaches the covenants not-to-compete herein, then: (i) Triumph shall have the right to cause Member to send all pigs containing Restricted Genetics promptly to slaughter and to destroy all semen, embryos and other genetic material that contain Restricted Genetics; (ii) Triumph shall be obligated to restrict any access by Member to any Triumph Genetics that contain Restricted Genetics (regardless of whether such Restricted Genetics may be at, above or below the commercial parent level); (iii) Triumph shall have the right but not the obligation to prosecute Member; and (iv) PIC shall have the right to prosecute Member under the provisions of the PIC Genetic Agreement. Member and Triumph hereby acknowledge that the covenant not-to-compete is the result of arms-length negotiations between them. The parties agree that the restrictions contained in this covenant not-to-compete are fair and reasonable in light of the nature of the business engaged in by the parties and the circumstances of the relationship created between them under this Agreement.

15. **Limitations on Use.** Member agrees that it will use genetics that contain Triumph Genetics or PIC Genetics only within the United States of America and only for purposes of raising market hogs that are sold exclusively for slaughter by Farmland.

16. **ENTIRE AGREEMENT.** THIS GENETIC SUPPLY AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT OF THE PARTIES REGARDING THE MATTERS COVERED HEREIN, AND SUPERSEDES ALL OTHER AGREEMENTS, REPRESENTATIONS, OR NEGOTIATIONS BETWEEN OR BY THE PARTIES HERETO, WHETHER ORAL OR WRITTEN, REGARDING SUCH MATTERS. THIS AGREEMENT MAY NOT BE AMENDED EXCEPT BY A WRITTEN DOCUMENT SIGNED BY BOTH PARTIES. MEMBER ACKNOWLEDGES THAT IT HAS READ AND UNDERSTANDS THIS AGREEMENT, AND THAT MEMBER'S ENTERING INTO THIS AGREEMENT IS VOLUNTARY AND NOT DONE IN RELIANCE OF ANY REPRESENTATION BY TRIUMPH. MEMBER ALSO ACKNOWLEDGES THE REQUIREMENT TO EXECUTE AN AMERICA'S BEST PORK PARTICIPATION AGREEMENT AND RELATED DOCUMENTS PERTAINING TO MEMBER'S RELATIONSHIP WITH TRIUMPH AND FARMLAND INDUSTRIES, INC.

17. **Applicable Law.** This Agreement will be interpreted under the laws of the State of Missouri. The parties consent that any dispute hereunder will be tried in the Missouri Circuit Court, that they will consent to the Missouri Circuit Court's jurisdiction over them.

18. **Force Majeure; Discontinuance.** Either party to this Agreement shall be relieved of its responsibilities and obligations hereunder when performance becomes commercially impossible because of reasons beyond their reasonable control including, but not limited to, fire, explosion, strike, accident, disease, governmental regulation or intervention or acts of God.

19. **Alternate Dispute Resolution.** In the event of any controversy arising out of or relating to this Agreement, or any breach thereof (excluding collection matters, which Triumph may pursue in court), the parties agree to submit the dispute for resolution by Mini-Trial, unless both parties agree that such procedure is inappropriate for the matter in controversy. Such Mini-Trial shall be conducted in accordance with the Center for Public Resources (CPR) Mini-Trial for Business Disputes and may be initiated by either party by a

written request to the other party. In the event the parties are unable to resolve the controversy through the Mini-Trial, the dispute shall be submitted to binding arbitration in accordance with the rules of Missouri law. Such arbitration shall be initiated by either party by notifying the other party in writing and requesting a panel of five (5) arbitrators from the American Arbitration Association. Alternate strikes shall be made to the panel commencing with the party requesting the arbitration until one name remains. Such individual shall be the arbitrator for the controversy. The party requesting the arbitration shall notify the arbitrator who shall hold a hearing(s) within 60 days of the notice. The arbitrator shall render a decision within 20 days after the conclusion of the hearing(s). Judgment upon the award rendered by the arbitrator may be entered in any Court having jurisdiction thereof. All fees for such arbitration will be divided equally between the parties except that each party shall pay its own attorney's fees and costs associated with producing documents and other information. If Member asserts any claim and has failed to pay Triumph for any genetics or owes any payment to Triumph, Member shall be obligated to pay for all delivered genetics and to pay to Triumph all amounts owed, with no right of setoff, as a condition of invoking this Alternative Dispute Resolution procedure.

In Witness Whereof, the parties have caused this Agreement to be executed on the day and year above written.

**THIS CONTRACT CONTAINS A BINDING ARBITRATION CLAUSE WHICH MAY BE ENFORCED BY THE PARTIES.**

**TRIUMPH PORK GROUP LLC**

**MEMBER:** \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

## **SCHEDULE 1**

### **CONDITIONS OF SALE**

#### **TRIUMPH GENETIC SUPPLY MEMBER AGREEMENT**

THESE CONDITIONS OF SALE ARE ATTACHED TO THAT CERTAIN TRIUMPH GENETIC SUPPLY MEMBER AGREEMENT BY AND BETWEEN TRIUMPH PORK GROUP AND MEMBER. THEY PERTAIN TO THE PROVISION OF GENETICS FROM PIG IMPROVEMENT COMPANY, INC., TO TRIUMPH AND FROM TRIUMPH TO MEMBER.

#### **A. WARRANTIES OF TRIUMPH.**

1. Animals supplied by Triumph under these Conditions of Sale ("Animals") have been inspected and certified in accordance with applicable federal and state animal health regulations.

2. Semen supplied under these Conditions of Sale ("Semen") and Animals will be of the line, type and genetic status indicated in the Triumph Genetic Supply Member Agreement between Triumph and Member and the orders placed for Animals or Semen.

3. Artificial Insemination ("AI") Boars supplied by Triumph under these Conditions of Sale will be structurally sound at the time they are delivered to Member's facility. Except for structural soundness at time of delivery, Member assumes all risks associated with the capability of the AI Boars to be trained to approach, mount, and leave an AI dummy and to produce viable semen. Member may need to order additional AI Boars at Member's cost and expense as replacements for AI Boars that are not trainable or that do not produce viable semen.

4. All Natural Service Boars supplied by Triumph under these Conditions of Sale will be structurally sound at the time they are delivered to Member's facility. Except for structural soundness at time of delivery, Member assumes all risks associated with the capability of the Natural Service Boars to produce viable semen and to successfully breed. Member may need to order additional Natural Service Boars at Member's cost and expense as replacements for Natural Service Boars that do not produce viable semen or that do not successfully breed.

5. All Gilts supplied by Triumph under these Conditions of Sale will be structurally sound at the time they are delivered to Member's facility. Except for structural soundness at time of delivery, Member assumes all risks associated with the capability of the Gilts to successfully breed. Member may need to order additional Gilts at Member's cost and expense as replacements for Gilts that do not successfully breed.

6. All Isowean Animals supplied by Triumph under these Conditions of Sale will be in good physical condition, will weigh more than 8 pounds, and will be between the age of 14 days and 21 days at delivery.

7. Triumph has title to the Semen it supplies under these Conditions of Sale. The Semen will be of good live concentration and fit for administration to female swine at the time of delivery to Member.

8. Member's attention is drawn to Section H. (Disease Statement) and Section I. (Disclaimer of Other Warranties) of these Conditions of Sale.

## B. ISOLATION AND ACCLIMATIZATION OF ANIMALS.

1. Member will completely isolate all Animals in a clean facility, physically separate from other swine for at least 30 days from delivery, will follow the recommendations of a licensed veterinarian for isolation and for release of Animals after the isolation period, and will not begin acclimatization procedures for 30 days after delivery. Triumph encourages Member to test Animals, at Member's expense, for pathogens or disease which are of concern to Member while Animals are in isolation. Member agrees and understands that Triumph will not have any duty to credit Member for Animals due to the presence of infectious agents.

2. Member will acclimatize Animals in a separate facility alongside existing stock for at least 30 days after isolation, and will follow the recommendations of a licensed veterinarian for the release of Animals from isolation and acclimatization.

## C. WARRANTIES OF MEMBER. Member makes the following warranties to Triumph:

1. Member will use the Animals and Semen purchased under these Conditions of Sale and any semen collected from AI Boars only with respect to the development or maintenance of the Triumph Pig.

2. Member will not use, sell or transfer the Animals or Semen purchased under these Conditions of Sale or any semen collected from AI Boars except in accordance with the terms and provisions of the Triumph Genetic Supply Member Agreement.

3. Member will use, sell, license or transfer the progeny of Animals or Semen purchased under these Conditions of Sale only in accordance with the terms of the Triumph Genetic Supply Member Agreement.

## D. CREDITS AND PROCEDURES.

1. In case of a complaint, Member must call Triumph within 48 hours of delivery, stating delivery date, invoice number, pig tag and/or ear tattoo number and/or batch number, and the exact nature of the complaint. If any Animal does not meet the warranties set out in these Conditions of Sale, Triumph may authorize slaughter following notification and/or may issue a credit for the invoiced cost of the Animal less slaughter value.

2. Triumph will issue credits on Animals and Semen that do not meet the warranties set out in these Conditions of Sale only if the complaint is received within 48 hours after delivery of such Animals or Semen. Triumph will not issue credit for Semen or for structurally unsound Animals, dead Animals, or any slaughtered Animals unless the complaint process described above has been followed. Credits will be offset against any debt owed by Member, and any balance will be credited to Member's account.

E. LIMITATION OF LIABILITY. While Triumph acts in accordance with good breeding practices to insure that Animals and Semen are free from infectious agents, the price payable for Animals and Semen reflects that Triumph will have no liability for risk of loss of or damage to Animals or Semen from and after delivery to Member. Except as otherwise set forth in the Agreement or these Conditions of Sale, Triumph's liability for losses due to infectious agents, whether transmitted by or through semen or otherwise, or due to advice and information given by Triumph, whether oral or written, or due to Triumph's breach of these Conditions of Sale, or due to any other cause in respect of any Animals or Semen will be limited to the credit procedure in the manner provided in Section D (Credits and Procedures)

above or, in the event that no further Animals or Semen are purchased by Member, a refund of the invoiced cost of the Animal or Semen in question, less slaughter value. Triumph will have no liability for losses resulting or allegedly resulting from failure of female Animals to conceive, settle, farrow or produce progeny after mating or after administration of semen, regardless if semen is purchased from Triumph or collected from AI Boars purchased from Triumph. Triumph will not be liable for incidental or consequential losses, including, without limitation, veterinarian's fees, lost profits, loss of anticipated savings or other incidental or consequential damages of any nature.

F. **LATE DELIVERY.** While Triumph will make an effort to deliver Animals and Semen on time, specified or suggested delivery dates will not be of the essence of these Conditions of Sale. Triumph will have no liability for any loss caused by late delivery.

G. **LIMITATION PERIOD.** Any claim alleged to arise out of the purchase of Animals or Semen pursuant to these Conditions of Sale shall be commenced in accordance with the arbitration provisions under the Triumph Genetic Supply Member Agreement (the "Agreement") to which these Conditions of Sale are attached.

H. **DISEASE STATEMENT.** Member is experienced in swine breeding and knows that organisms which cause swine diseases (called pathogens) are present in virtually every swine herd, including Triumph's swine herds, and in semen. New or different pathogens or diseases may arise at any time. (See also Triumph's Isolation and Acclimatization recommendations.) The outbreak of diseases however is caused by many factors in addition to the presence of pathogens within a swine, swine herd, or semen. Although Triumph attempts to minimize the presence of pathogens and diseases in its herds and in the swine breeding stock and semen it sells, TRIUMPH CANNOT AND DOES NOT WARRANT THE ABSENCE OF ANY PATHOGENS OR DISEASE IN THE ANIMALS OR SEMEN SOLD TO MEMBER BY TRIUMPH. PATHOGENS OR DISEASES MAY BE PRESENT AT TIME OF SALE OR MAY APPEAR LATER.

I. **DISCLAIMER OF OTHER WARRANTIES.** These Conditions of Sale and the Agreement to which they are attached contain all of the warranties made by Triumph to Member. No other warranties, expressed or implied are given. Except as otherwise set out in these Conditions of Sale, all Animals and Semen sold under these Conditions of Sale are sold "AS IS". PIC AND TRIUMPH SPECIFICALLY GIVE NO WARRANTY OF MERCHANTABILITY, HEALTH, OR FITNESS FOR A PARTICULAR PURPOSE EXCEPT AS PROVIDED IN THE AGREEMENT, OR THESE CONDITIONS OF SALE. Except as set forth in the Agreement or these Conditions of Sale, Triumph specifically disclaims any warranty of the genetic make-up of Animals or Semen, the performance of Animals or Semen, or the characteristics for performance of the progeny of Animals or Semen. There are no warranties with regard to Animals or Semen that extend beyond these Conditions of Sale and the Agreement.

J. **NON-WAIVER.** Failure to enforce any provision in these Conditions of Sale will not be deemed a waiver of Triumph's future right to enforcement of that provision or any other provision in these Conditions of Sale.

K. **EXCLUSIVE REMEDY.** WITH RESPECT TO THE TRANSFER OF ANIMALS OR SEMEN UNDER THESE CONDITIONS OF SALE, THIS REMEDY OF CREDIT FOR THE INVOICED COST OF AN ANIMAL, LESS SLAUGHTER VALUE, OR CREDIT FOR THE INVOICED COST OF SEMEN, AS PROVIDED IN SECTION D OF THESE CONDITIONS OF SALE, IS THE EXCLUSIVE REMEDY AGAINST PIC AND TRIUMPH FOR ANY CLAIM DIRECTLY RELATING TO THE PURCHASE OF ANIMALS OR SEMEN FROM TRIUMPH BY



MEMBER. ALL OTHER REMEDIES, WHETHER UNDER STATUTE, REGULATION, CONTRACT, TORT, WARRANTY, NEGLIGENCE, OR ANY OTHER LEGAL THEORY OF ANY NATURE, ARE EXPRESSLY WAIVED BY MEMBER. MEMBER IS AWARE OF THE RISKS OF SWINE PRODUCTION AND THEREFORE ACKNOWLEDGES THAT THIS WAIVER IS NEITHER UNREASONABLE NOR UNCONSCIONABLE.

L. PAYMENT. Payment will be made in full on receipt of invoice. A late-payment service charge of 1/1/2% per month (18% per year) will be added to any amount unpaid within ten (10) days. Triumph may withhold future deliveries if Member fails to make payments as set out in these Conditions of Sale.

M. ENTIRE AGREEMENT. THESE CONDITIONS OF SALE AND THE AGREEMENT TO WHICH THEY ARE ATTACHED CONSTITUTE THE ENTIRE AGREEMENT OF THE PARTIES REGARDING THE MATTERS COVERED IN THIS AGREEMENT, AND SUPERSEDE ALL OTHER AGREEMENTS, REPRESENTATIONS, OR NEGOTIATIONS BETWEEN OR BY THE PARTIES HERETO, WHETHER ORAL OR WRITTEN, REGARDING THE MATTER OF THE TRANSFER OF ANIMALS OR SEMEN TO MEMBER. THESE CONDITIONS OF SALE MAY NOT BE AMENDED EXCEPT BY A WRITTEN DOCUMENT SIGNED BY MEMBER AND TRIUMPH. MEMBER ACKNOWLEDGES THAT MEMBER HAS READ AND UNDERSTANDS THESE CONDITIONS OF SALE, AND THAT MEMBER'S ENTERING INTO THESE CONDITIONS OF SALE IS VOLUNTARY AND NOT DONE IN RELIANCE OF ANY REPRESENTATION OF PIC OR TRIUMPH EXCEPT AS EXPLICITLY PROVIDED IN THESE CONDITIONS OF SALE OR THE AGREEMENT.

MEMBER AGREES, BY SIGNING BELOW, THAT TRIUMPH HAS GIVEN MEMBER NO PROMISES, WARRANTIES, GUARANTEES OR REPRESENTATIONS EXCEPT AS SPECIFICALLY STATED IN THESE CONDITIONS OF SALE AND THE ATTACHED AGREEMENT.

TRIUMPH PORK GROUP LLC

MEMBER: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## SCHEDULE 2

### COST OF GOODS

#### TRIUMPH GENETIC SUPPLY MEMBER AGREEMENT

EFFECTIVE THROUGH DECEMBER 31, 2000

#### PARENT GILT

CATEGORY	WEIGHT OR AGE	ROUTINE ORDER <sup>1</sup>	SPOT ORDER <sup>2</sup>
Select	240-260#	\$35 + carcass value <sup>3</sup>	Price quote
Breeder/Weaner	40-50#	\$77	Price quote
Isowean	21 days or less	\$62	Price quote

#### GREAT GRANDPARENT OR GRANDPARENT GILT

CATEGORY	WEIGHT OR AGE	ROUTINE ORDER <sup>1</sup>	SPOT ORDER <sup>2</sup>
Select	240-260#	\$90 + carcass value <sup>3</sup>	Price quote
Breeder/Weaner	40-50#	\$121	Price quote
Isowean	21 days or less	\$106	Price quote

#### BOARS

CATEGORY	COST
AI Boar	\$450 + market value <sup>3</sup>
Natural Service Boar	\$150 + market value <sup>3</sup>

#### SEMEN

DOSES PER DELIVERY	ROUTINE ORDER <sup>1</sup>	SPOT ORDER <sup>2</sup>
50 or more doses	\$4.50 per dose delivered	\$5.00 per dose delivered
Less than 50 doses	\$4.75 per dose delivered	\$5.25 per dose delivered

#### Footnotes:

1. Routine Order: Recurring, repetitious order.
2. Spot Order: Nonrecurring order.
3. Carcass value: USDA 185-lb. pork carcass cutout (previous week's average) X 0.74 X average liveweight/100.

MULTIPLE WEIGHT GILTS: Price quote on request.

PREMIUM CREDIT: In lieu of premium refunds or future credit for gilts due to lameness, failure to cycle, or other conditions rendering them unfit for breeding, 3% of shipped mature gilts will be invoiced at carcass value only.

DELIVERY: Delivery is not included in above costs (except for semen) and will be invoiced to Member at actual cost, which cost shall be paid by Member.

REVISIONS: Triumph, at its option and in its sole and absolute discretion, at any time and from time to time on or after January 1, 2001, may revise the cost of goods of the genetics set forth in this Schedule 2; provided, however, Triumph shall give Member ninety (90) days prior written notice of such revision in the cost of goods.



Contract Number: [REDACTED]

## AMERICA'S BEST PORK<sup>®</sup> MARKET HOG PURCHASE AGREEMENT

This Agreement is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2000, by and between Farmland Industries Inc. ("Farmland"), at PO Box 7527, Kansas City, MO 64116-0227 and [REDACTED], located at [REDACTED] producer of market hogs ("Producer").

### PREMISES

Farmland desires to purchase from competent independent pork producers who are participating in America's Best Pork<sup>®</sup> high quality slaughter hogs suitable for processing. Producer has access to the necessary land, facilities, equipment, labor, feed, and Triumph Genetics (defined below) for the purposes of fulfilling Producer's obligations under this Agreement.

### AGREEMENTS

NOW, THEREFORE, the parties hereto agree as follows:

1. **SALE OF QUALIFYING MARKET HOGS.** During the term of this Agreement, Farmland shall purchase from Producer and Producer shall sell to Farmland all Qualifying Market Hogs to Farmland under this Agreement according to the schedule set forth in Section 4 of this Agreement. The purchase price shall be determined in accordance with the terms and conditions of this Agreement.

2. **TERM OF AGREEMENT.** This Agreement shall commence on the date first above written and shall continue for four (4) years from such date, unless sooner terminated in accordance with the terms hereof.

3. **BREEDING STOCK LIMIT.** The Breeding Stock used to produce the Qualifying Market Hogs delivered under this Agreement shall not exceed a maximum inventory of \_\_\_\_\_ gilts and sows.

4. **DELIVERY SCHEDULE.** Producer shall make all deliveries to the slaughter facility requested by Farmland and as provided in Section 5 of this Agreement by 3:00 p.m. on the day prior to the day of slaughter, by 7:00 a.m. on the day of slaughter, or at any other time as requested by Farmland. Producer shall deliver Qualifying Market Hogs to Farmland on a regular and an even volume basis. Producer shall give Farmland a one-week notice of the expected delivery date of the Qualifying Market Hogs. Producer shall contact Farmland on Wednesday of each week and Farmland shall designate the dates within the following week on which deliveries are to be made. The estimated number of Qualifying Market Hogs to be delivered for each calendar quarter is set forth below:

ESTIMATED QUARTERLY DELIVERIES

Year	1st Quarter (Jan-Mar)	2nd Quarter (Apr-Jun)	3rd Quarter (July-Sept)	4th Quarter (Oct-Dec)

5. **TRANSPORTATION OF QUALIFYING MARKET HOGS.** Producer shall provide transportation at Producer's expense to the slaughter facility of Farmland Foods, Inc. ("Farmland Foods") located at:

\_\_\_\_\_(City, ST)

Farmland may request that one or more Lots of Qualifying Market Hogs be delivered to a slaughter facility other than designated in this section.

6. **DEFINITIONS.** The following words and terms used in this Agreement shall have the following meanings:

(a) "Base Price" shall mean the base price applicable to Qualifying Market Hogs and as determined in accordance with Schedule 1 attached hereto.

(b) "Breeding Stock" shall mean the gilts, sows, and boars, or the replacements thereof, that are owned or used by the Producer for the purpose of producing offspring suitable for Qualifying Market Hogs.

(c) "Facilities" shall mean the land, buildings, and equipment owned, leased, or contracted by Producer in connection with the housing, care, and feeding of the Herd.

(d) "Herd" shall mean the Breeding Stock and the offspring thereof.

(e) "Lot" shall mean a group of one or more market hogs that has the same Farmland tattoo number.

(f) "Nonqualifying Market Hogs" shall mean all market hogs that do not conform to the requirements for Qualifying Market Hogs.

(g) "Qualifying Market Hogs" shall mean the market hogs delivered to Farmland that conform to the following criteria:

- 1) All genetic material entering the Herd must be Triumph Genetics;
- 2) An average scalded carcass weight per Lot of 170 pounds to 207 pounds or an average skinned carcass weight per Lot of 151 pounds to 183 pounds, as the case may be, based upon the configuration of the applicable slaughter facility to which a Lot is delivered;
- 3) Free of the following defects: (i) tail bites; (ii) uncastrated males; (iii) freshly castrated males; (iv) ruptures; (v) abscesses; (vi) freshly cut or unhealed wounds; or (vii) any defect that would result in a down-grade of the animal's carcass or value; and
- 4) Such other additional conditions that are acceptable to Farmland as may be required by developments or conditions in the industry, including without limitation pork customer preferences or other competitive conditions. The parties agree to negotiate in good faith with respect to accepting such additional conditions.

(g) "Triumph Genetics" shall mean the genetics approved in writing by Triumph Pork Group LLC.

7. **CARCASS LEAN AND WEIGHT PREMIUMS AND DISCOUNTS AND ADJUSTMENTS.** The Base Price shall be subject to premiums and discounts for carcass lean and weight, which premiums and discounts will be determined according to Farmland's current America's Best Pork<sup>®</sup> carcass merit program in effect at the time of slaughter. A copy of the current America's Best Pork<sup>®</sup> carcass merit program schedule is attached hereto as Exhibit A. The Base Price and the America's Best Pork<sup>®</sup> carcass merit program may be changed from time to time to reflect developments in the pork industry and markets. Farmland will provide Producer with ninety (90) days advance written notice of the effective date of any changes in the Base Price or the America's Best Pork<sup>®</sup> carcass merit program. If Producer does not agree to accept the change or changes to the Base Price or the America's Best Pork<sup>®</sup> carcass merit program, then the Producer must give written notice to Farmland prior to the effective date of such change or changes stating Producer's refusal to accept such change or changes, in which case Farmland may in its sole and absolute discretion terminate this Agreement at anytime beginning ninety (90) days after receiving the written refusal notice from Producer.

8. **HERD CARE AND MANAGEMENT.** Producer shall supply all necessary management, labor, and utilities to properly operate the Facilities

and transportation to and from the Facilities and shall supply all medications, vaccines and feed to competently feed, water and otherwise care for the Herd in accordance and full compliance with the America's Best Pork® Participation Agreement and in accordance with the terms of this Agreement so as to ensure timely delivery of Qualifying Market Hogs hereunder. Producer must maintain and comply with PQA Level III certification at all times. Verification of such certification must be provided to Farmland. Producer shall notify Farmland of any problems or conditions that may affect Producer's ability to deliver Qualifying Market Hogs according to the terms of this Agreement, but such notification by Producer does not relieve or limit Producer's obligations or liability hereunder. Moreover, it is the intention of Producer and Farmland that Producer, and only Producer, will be directly involved in conducting the actual day-to-day operations of the Facilities and is in fact the producer of the Qualifying Market Hogs delivered under this contract such that Producer, and no other producer, is the person actually raising the Qualifying Market Hogs. It is agreed that this assurance is a core and essential term of this Agreement.

**9. VETERINARY SERVICES.** The parties acknowledge that proper management of the Herd by Producer shall include normal veterinary care, which will include normal and regular veterinary review of the management and care of the Herd. In connection therewith, Producer will instruct and direct Producer's veterinarians and other employees to administer medications, vaccines and other animal health care products only in accordance with label directions and instructions. In addition, with respect to any such medications, vaccines or other animal health care products that are subject to USDA approval, only products with such approval will be utilized. In addition, Producer shall use commercially reasonable efforts to insure that any and all medications, vaccines and other animal health care products used with respect to the Herd are reduced to the lowest level possible consistent with good management practices, PQA Level III requirements, and the America's Best Pork® Process Verification Program.

**10. USDA INSPECTION.** All Qualifying Market Hogs and Nonqualifying Market Hogs delivered under this Agreement are purchased subject to passing inspection by the USDA with deductions to the purchase price for all carcasses or carcass parts that are condemned or not unconditionally approved by USDA inspectors. Nonqualifying Market Hogs will be purchased at the lesser of (a) Farmland's current price for hogs of like kind, grade, and quality on the day these hogs are delivered or (b) the Base Price less \$1.00 per carcass cwt.

**11. CARCASS YIELD.** Carcasses will be skinned or scalded at Farmland's option depending on the configuration of the slaughter facility. Carcass yield for both scalded and skinned carcasses will be determined after removing the head, kidneys, leaf fat, hanging tenders, and spinal cord, and in the case of skinned carcasses, after also removing the skin and feet. Carcass yield or trim loss due to health reasons, carcass defects, bruises, and any other trimming or harvesting procedures conducted by Farmland Foods in its sole and absolute discretion is at Producer's expense.

**12. RIGHT OF INSPECTION.** Producer acknowledges that animal health is of paramount importance to Farmland. Upon reasonable notice and compliance with reasonable biosecurity requests of Producer, Farmland shall have the right to inspect the Facilities and to inspect Producer's records in order to confirm and verify that Producer is fulfilling Producer's responsibilities hereunder, including without limitation, the management and use of Triumph Genetics and other health, production, and feeding programs called for hereunder. Producer agrees to provide all supporting records and documentation upon request by Farmland.

**13. WEIGHING CONDITIONS.** All shipments will be weighed at state-inspected scales maintained by Farmland at the slaughter facility. A copy of all scale tickets will be provided to Producer.

**14. METHOD OF PAYMENT.** Farmland shall make prompt payment to Producer within 48 hours after carcass value has been determined.

**15. FAILURE OF DELIVERY.** Producer commits 100% of the Qualifying Market Hogs for delivery to Farmland. Farmland has the right to closely monitor Producer's market hog production, sales, and inventories to ensure that 100% of Producer's production of Qualifying Market Hogs are being delivered to Farmland under the terms of this Agreement. In the event Producer fails to deliver 100% of the Qualifying Market Hogs as required

hereunder, Farmland may in its sole and absolute discretion elect to terminate this Agreement upon written notice to Producer.

**16. BREACH AND REMEDIES.** If Producer shall fail to observe or perform any covenant or agreement contained herein, Farmland may terminate this agreement upon written notice to Producer. Farmland will not exercise this right until Farmland has given Producer notice of such failure and thirty (30) days to cure such failure. Notwithstanding the foregoing, Farmland shall have the immediate right to terminate this Agreement in its sole and absolute discretion upon notice to Producer under the provisions of Section 15 under this Agreement, or in the event Producer is given more than one default notice in any one-year period, or in the event it appears to Farmland that Producer's default is material, willful or based on fraud, misrepresentation or deception. In the event of termination, Farmland will have the right to collect liquidated damages from Producer. The parties agree that actual damages in the event of termination will be difficult to determine and that the following method is a fair and accurate estimation of the appropriate damages that would be due Farmland. The liquidated damages shall be determined by calculating the aggregate total of the Base Price payment difference, as defined below, for all Lots delivered under this Agreement at the time of termination, plus the administrative and out-of-pocket costs of enforcement. For purposes of the liquidated damages calculation, the term 'Base Price payment difference' shall mean that number determined by calculating the difference between the internal Farmland plant price, as defined below, and the Base Price actually paid for the Lot. The liquidated damages shall then be determined by multiplying the Base Price payment difference by the total carcass hundredweight of the Lot. For purposes of this Section, the internal Farmland plant price shall mean that price defined by Farmland in its sole and absolute discretion as the base price for its open market purchase activity. The election of one remedy shall not foreclose the use of any other remedy by Farmland, and the remedies shall be considered cumulative and not exclusive.

**17. FARMLAND DISCLAIMER.** FARMLAND EXPRESSLY DISCLAIMS THE MAKING OF, AND PRODUCER ACKNOWLEDGES THAT PRODUCER HAS NOT RECEIVED OR RELIED UPON, ANY WARRANTY OR GUARANTY, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AS TO THE TRIUMPH GENETICS, BREEDING STOCK, FEED, MEDICATION OR FEEDING PROGRAM PRESCRIBED UNDER THIS AGREEMENT, OR ANY POTENTIAL PROFITS OR SUCCESS OF THE TRANSACTIONS ADDRESSED IN THIS AGREEMENT. PRODUCER SHOULD DISREGARD ANY UNAUTHORIZED INFORMATION, WHETHER ORAL OR WRITTEN, FROM ANY REPRESENTATIVE OF FARMLAND CONCERNING THE VOLUME, PROFITABILITY, OR CHANCE OF SUCCESS OF THE TRANSACTIONS REPRESENTED BY THIS AGREEMENT. PRODUCER RECOGNIZES AND ACCEPTS THE RISKS AND HAZARDS INHERENT IN OR ASSOCIATED WITH LIVESTOCK PRODUCTION.

**18. PRODUCER DISCLAIMER.** PRODUCER MAKES NO WARRANTIES, EITHER EXPRESSED OR IMPLIED, TO FARMLAND OTHER THAN AS MAY BE SPECIFICALLY SET FORTH HEREIN.

**19. FORCE MAJEURE; INDUSTRY DEVELOPMENTS.** Either party to this Agreement shall be relieved of its responsibilities and obligations hereunder when performance becomes commercially impossible because of reasons beyond the party's reasonable control including, but not limited to, fire, explosion, strike, riot, accident, governmental regulations, intervention, or acts of God, and with respect to Farmland, when performance is not commercially reasonable due to reduction of Farmland's slaughter capacity. In the event industry-wide developments occur that are beyond the control of the parties, the parties agree to negotiate in good faith a mutually acceptable strategy to address such developments.

**20. ASSIGNMENT.** This Agreement may not be assigned by Producer without the prior written consent of Farmland. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

**21. NO WAIVER.** No failure of either party hereto to exercise any power reserved to it by this Agreement, or to insist upon strict compliance by the other party hereto with any obligation or condition hereunder, and no custom

or practice by the parties at variance with the terms hereof, shall constitute a waiver or estoppel of a party's right to demand exact compliance with any of the terms herein. Waiver by a party of any particular default by the other party shall not affect or impair a party's rights with respect to any subsequent default of the same, similar, or different nature, nor shall delay, forbearance, or omission of a party to exercise any power or right arising out of any breach or default by the other party hereto constitute a waiver by a party of any right hereunder, or the right to declare any subsequent breach or default or to terminate this Agreement prior to the expiration of its term.

**22. ENTIRE AGREEMENT AND MODIFICATION.** This Agreement constitutes the entire agreement between the parties and can be modified only in writing signed by all parties hereto.

**23. NOTICES.** All notices, requests, demands and other communications hereunder shall be deemed to be duly given if delivered by hand or if mailed by certified or registered mail, postage prepaid, at the addresses set forth above.

**24. APPLICABLE LAW.** This Agreement shall be construed in accordance with the laws of the State of Missouri, without reference to the conflict of laws principles of such state.

**25. COUNTERPARTS.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

**26. HEADINGS.** The headings used in this Agreement are for convenience only and shall not constitute a part of this Agreement.

**27. EXHIBITS AND SCHEDULES.** All of the exhibits, schedules, and appendices attached hereto are incorporated herein and made a part of this Agreement by reference thereto.

**28. ARBITRATION.** Any dispute, controversy, or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Any award made by the arbitration panel shall be binding on the parties and judgment thereon may be entered in any court having jurisdiction over the nonprevailing party or parties. The costs of the arbitration shall be borne equally by the parties, provided that each party shall pay for and bear the cost of its own experts, evidence, and legal counsel unless otherwise agreed in writing.

**THIS CONTRACT CONTAINS A BINDING ARBITRATION PROVISION THAT MAY BE ENFORCED BY THE PARTIES.**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

PRODUCER: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

FARMLAND INDUSTRIES, INC.

By: \_\_\_\_\_

Printed Name: H. D. Cleberg

Title: President & CEO



## Process Verification Program

### 1. Triumph Genetics

- The "phase in" of 100% Triumph genetics including timeline, replacement schedule, annual replacement rate, etc. will be negotiated by and between individual producers and Triumph Pork Group, LC and mutually agreed to prior to signing the participation agreement/genetics supply agreements. The final date for 100% adoption of Triumph genetics by a participating producer will be specifically noted within executed agreements.
  - Annual replacement rate for gilts will be  $\geq 35\%$ 
    - $< 35\%$  constitutes a minor non-compliance event. A corrective action plan will be in place within 10 days and full compliance will be achieved within 6 months. Failure to act, or continued non-compliance after six months constitutes a major violation and will result in removal from the America's Best Pork program.
  - All boars used on farm will be limited to a not less than 1:150 female ratio, with  $> 50\%$  annual replacement.
    - $< 1:150$  ratio, or  $< 50\%$  annual replacement constitutes a minor non-compliance event. A corrective action plan will be in place within 10 days and full compliance will be achieved within 6 months. Failure to act, or continued non-compliance after six months constitutes a major violation and will result in removal from the America's Best Pork program.
  - Natural service and intact teaser boars allowed, if Triumph genetics.
  - Farm-raised teaser boars can only be used if vasectomized (veterinarian verified).
    - Use of non-vasectomized farm-raised teaser boars constitutes a major violation and will result in removal from the America's Best Pork program.

### 2. ABP Nutritional Specifications

- Diet nutrient specifications approved by ABP Nutrition review committee.
- Ingredient exclusions:
  - No meat and/or bone meal.
  - No by-products containing meat and/or bone meal.
    - Use of meat and/or bone in any diets constitutes a major violation and will result in the removal from the America's Best Pork program.

### 3. Feed Manufacturing Quality Control

- Failure to follow feed industry current GMPs constitutes a minor non-compliance event. A corrective action plan will be in place within 10 days and full compliance will be achieved within 30 days. Failure to act, or continued non-compliance after 30 days constitutes a major violation and could result in removal from the America's Best Pork program.
- Batching, sequencing, flushing and sample retention procedures with related feed production records will be maintained as defined by Text of the FDA's "Current Good Manufacturing Practice Regulations for Feeds," specifically PART 225, Subpart C Product Quality Control § 225.42 Components, paragraph (b), § 225.65 Equipment cleanout procedures, paragraph (a), and Subpart E Records and Reports § 225.102 Master record file and production records.

### 4. APHIS-approved Biological use only

- Failure to follow APHIS label directions constitutes a minor non-compliance event. Immediate action will be taken to correct the problem and full compliance will be achieved within 30 days. Failure to act, or continued non-compliance after 30 days constitutes a major violation and will result in removal from the America's Best Pork program. Note: Use of non-USDA approved autogenous vaccines constitutes a major violation resulting in removal from the America's Best Pork program.
- Limited to autogenous vaccines manufactured at a USDA-approved facility.
- Farm vaccination records will be properly maintained and readily available for inspection, as required by PQA Level III.

### 5. AMDUCA Guidelines for Pharmaceutical Drug use are followed

- Note: Failure to follow AMDUCA guidelines constitutes a major violation resulting in removal from the America's Best Pork program. Additionally, the following are in force within 100 days of harvest:
- Veterinarian script, or Vet-approved standing treatment protocol must be on file and available for inspection.

**6. Tetracycline excluded from feed or water 15 days prior to harvest**

*Note: Failure to follow Tetracycline restrictions constitutes a major violation resulting in removal from the America's Best Pork program. Additionally:*

- All pen or barn treatments will be identified by records for pre-harvest sorting, either on the farm or at the plant.

**7. Sulfonamide drugs excluded from feed or water within 100 days of harvest**

*Note: Failure to follow Sulfonamide drug restrictions constitutes a major violation resulting in removal from the America's Best Pork program.*

- All pen or barn treatments will be identified by records for pre-harvest sorting, either on the farm or at the plant.

**8. Injections prohibited 30 days prior to harvest**

- Any individual animal treated within 30 days of harvest and remaining with untreated animals will be ear tagged with a Triumph green tag.

*Note: Failure to tag individual animals treated within 30 days of harvest constitutes a major violation resulting in removal from the America's Best Pork program.*

- All pen or barn treatments will be identified by records for pre-harvest sorting, either on the farm or at the plant.

**9. On-farm Animal Handling**

- Walking of animal pens a regular basis, but not less than 3x weekly.

*Failure to walk pens constitutes a minor non-compliance event. Immediate action will be taken to correct the problem. Failure to act, or continued non-compliance constitutes a major violation and could result in removal from the America's Best Pork program.*

- Temperature control (at load out)

- Sprinkling and/or misting when ambient temperatures exceed the "danger" category as indicated on the "Livestock Weather Safety Index."

*Failure to follow constitutes a minor non-compliance event. A corrective action plan will be in place within one day and full compliance will be achieved within 3 days. Failure to act, or continued non-compliance after 3 days constitutes a major violation and could result in removal from the America's Best Pork program.*

- General use of electric prods (to facilitate pig loading/unloading) of animals being moved, and is limited to prods that do not exceed 6000 open circuit voltage and .85 battery amps. Electric prods or other implements employed to drive animals shall be used as little as possible in order to minimize excitement and injury.

*Misuse of electric prods constitutes a minor non-compliance event. Immediate action will be taken to correct equipment and/or usage problem. Failure to act, or continued non-compliance constitutes a major violation and could result in removal from the America's Best Pork program.*

- Use of canvas "slappers" is prohibited.

**10. Transportation**

- Temperature control.

- Sprinkling prior to loading when ambient temperatures exceed the "danger" category as indicated on the "Livestock Weather Safety Index."

- Truck panels to be used during winter months when windchill temperature falls below 30° F as indicated in the "Windchill Chart."

*Failure to follow constitutes a minor non-compliance event. A corrective action plan will be in place within one day of event and full compliance will be achieved within 3 days of event discovery. Failure to act, or continued non-compliance after 3 days constitutes a major violation and could result in removal from the America's Best Pork program.*

- Adequate bedding shall be used to insure proper footing, as well as insulation against frost bite during cold weather.
- Trucks should be cleaned and re-bedded between animal shipments.

- General use of electric prods (to facilitate pig loading/unloading) of animals being moved, and is limited to prods that do not exceed 6000 open circuit voltage and .85 battery amps. Electric prods or other implements employed to drive animals shall be used as little as possible in order to minimize excitement and injury.

*Misuse of electric prods constitutes a minor non-compliance event. Immediate action will be taken to correct equipment and/or usage problem. Failure to act, or continued non-compliance constitutes a major violation and could result in removal from the America's Best Pork program.*

- Use of canvas "slappers" is prohibited.

**11. POA Level III**

*Failure to employ POA Level III record keeping constitutes a major non-compliance event.*

*Immediate action will be taken to correct the problem with full compliance achieved within 1 day. Failure to act, or continued non-compliance after 30 days constitutes a repeat major violation and could result in removal from the America's Best Pork program.*

- Drug treatment records will be maintained including group, pen and/or individual pig treatment records.

- Verification of each Lot # will be documented on the "ABP PROCESS VERIFICATION CERTIFICATE of PVP Pigs" form.